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Administration; Michael Griffin,  
12 Director of NASA; Department of  
Commerce; Carlos M. Gutierrez,  
13 Secretary of Commerce

14 UNITED STATES DISTRICT COURT  
15 FOR THE CENTRAL DISTRICT OF CALIFORNIA  
16 WESTERN DIVISION

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Case No. CV-07-05669 ODW(VBKx)

**FEDERAL DEFENDANTS'  
ANSWER TO PLAINTIFFS' FIRST  
AMENDED COMPLAINT**

Honorable Otis D. Wright II

27 Plaintiffs,

28 v.

National Aeronautics and  
Space Administration, an

1 Agency of the United States; )  
 2 Michael Griffin, Director of )  
 3 NASA, in his official )  
 4 capacity only; Department of )  
 5 Commerce; Carlos M. )  
 6 Gutierrez, Secretary of )  
 7 Commerce, in his official )  
 8 capacity only; California )  
 9 Institute of Technology; )  
 10 and Does 1-100, )  
 11 )  
 12 )  
 13 )  
 14 )  
 15 )  
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 21 )  
 22 )  
 23 )  
 24 )  
 25 )  
 26 )  
 27 )  
 28 )  
 Defendants. )

8 The National Aeronautics and Space Administration (“NASA”); Michael  
 9 Griffin, Director of NASA, the U.S. Department of Commerce; and Carlos M.  
 10 Gutierrez, Secretary of Commerce (collectively, “Federal Defendants”), assert the  
 11 following defenses to all causes of action asserted against them in Plaintiffs’ First  
 12 Amended Complaint, without assuming the burden of proof on any issue as to  
 13 which the burden would otherwise rest on Plaintiffs, and reserve the right to assert  
 14 any other defense that may become available or appear during the proceedings in  
 15 this case:

16 **FIRST DEFENSE**

17 Plaintiffs’ claims are barred in whole or in part because this Court lacks  
 18 subject matter jurisdiction.

19 **SECOND DEFENSE**

20 Plaintiffs have failed to state a claim on which relief can be granted.

21 **THIRD DEFENSE**

22 The Federal Defendants answer the numbered paragraphs of the Complaint  
 23 as follows:

24 1. First sentence: This sentence states Plaintiffs’ vague and subjective  
 25 characterization of themselves as “leading” scientists and engineers, to which no  
 26 response is required; to the extent a response is required, the Federal Defendants  
 27 are without knowledge or information sufficient to form a belief as to the truth of  
 28 the allegations. *See Resp. infra* ¶¶ 3-30. Second sentence: Denied, except to

1 admit that Plaintiffs purport to bring the cause of action as stated therein. Third,  
2 fourth, and fifth sentences: These sentences state legal conclusions to which no  
3 response is required; to the extent a response is required, the allegations are denied.  
4 Sixth sentence: Denied, except to admit that Plaintiffs purport to seek declaratory  
5 and injunctive relief as stated therein.

6 2. Paragraph 2 states legal conclusions to which no response is required.  
7 To the extent a response is required, the Federal Defendants deny the allegations in  
8 Paragraph 2.

9 3.-30. The Federal Defendants admit that Plaintiffs purport to bring this  
10 lawsuit on behalf of themselves and all other similarly situated “non-sensitive”  
11 personnel employed by the California Institute of Technology (“Caltech”) at the Jet  
12 Propulsion Laboratory (“JPL”). The Federal Defendants are without knowledge or  
13 information sufficient to form a belief as to the truth of the remaining allegations in  
14 Paragraphs 3 through 30. The Federal Defendants aver that Caltech hires its own  
15 employees to perform its contract with NASA at JPL and that NASA does not  
16 maintain a roster of Caltech employees working at JPL.

17 31. Denied, except to admit that the National Aeronautics and Space Act  
18 of 1958 (“the Space Act”), which established NASA, provides that: “The  
19 Congress declares that the general welfare and security of the United States require  
20 that adequate provision be made for aeronautical and space activities. The  
21 Congress further declares that such activities shall be the responsibility of, and  
22 shall be directed by, a civilian agency exercising control over aeronautical and  
23 space activities sponsored by the United States, except that activities peculiar to or  
24 primarily associated with the development of weapons systems, military  
25 operations, or the defense of the United States (including the research and  
26 development necessary to make effective provision for the defense of the United  
27 States) shall be the responsibility of, and shall be directed by, the Department of  
28 Defense . . . .” 42 U.S.C. § 2451(b).

1           32. The Federal Defendants admit that Michael Griffin is the director of  
2 NASA and that Plaintiffs purport to sue him in his official capacity only.

3           33. First sentence: This sentence states Plaintiffs' vague and subjective  
4 characterization of Caltech as a "premier" research institution, to which no  
5 response is required. The Federal Defendants admit that Caltech is a nonprofit  
6 educational and research institution. Second sentence: Denied, except to admit  
7 that Caltech is located in Los Angeles County. Third sentence: Denied, except to  
8 admit that JPL is operated by Caltech; that, *inter alia*, Caltech employees, NASA  
9 employees, and various other contractor and subcontractor employees work at JPL;  
10 and that Caltech generally establishes its employees' compensation and benefits.  
11 Fourth sentence: Denied.

12           34. The Federal Defendants admit the allegations in Paragraph 34.

13           35. The Federal Defendants admit that Carlos M. Gutierrez is Secretary of  
14 Commerce and that Plaintiffs purport to sue him in his official capacity only.

15           36. The Federal Defendants are without knowledge or information  
16 sufficient to form a belief as to the truth of the allegations in Paragraph 36.

17           37. First sentence: Denied, except to admit that since 1959 Caltech has  
18 operated JPL as a Federally Funded Research and Development Center ("FFRDC")  
19 pursuant to a written contract with NASA and that "[a]n FFRDC meets some  
20 special long-term research or development need which cannot be met as effectively  
21 by existing in-house or contractor resources." 48 C.F.R. § 35.017. Second  
22 sentence: Denied, except to admit that NASA owns JPL's physical facilities.

23           38. First, second, third, and fifth sentences: The Federal Defendants are  
24 without knowledge or information sufficient to form a belief as to the truth of the  
25 allegations. *See Resp. supra* ¶¶ 3-30. Fourth sentence: Denied. Sixth sentence:  
26 This sentence states Plaintiffs' characterization of the reason NASA's scientists  
27 choose to work for NASA as well as their vague and subjective characterization of  
28 those scientists as "top" scientists, to which no response is required. The

1 remaining allegations are denied.

2 39. Entire paragraph: The Federal Defendants admit the existence of  
3 Homeland Security Presidential Directive 12 (“HSPD-12”), which speaks for itself  
4 and to which the Court is referred for a full and accurate statement of its contents.  
5 First sentence: Admitted. *See* HSPD-12. Second sentence: Denied, except to  
6 admit that HSPD-12 directed the establishment of “a mandatory, Government-wide  
7 standard for secure and reliable forms of identification issued by the Federal  
8 Government to its employees and contractors (including contractor employees).”  
9 *Id.* ¶ 1. Third and fourth sentences: Admitted. *Id.* ¶¶ 2-3.

10 40. Entire paragraph: The Federal Defendants admit the existence of  
11 HSPD-12, which speaks for itself and to which the Court is referred for a full and  
12 accurate statement of its contents. First sentence: This sentence states legal  
13 conclusions to which no response is required; to the extent a response is required,  
14 the allegations are denied. Second sentence: Denied, except to admit that HSPD-  
15 12 provides that “[t]his directive shall be implemented in a manner consistent with  
16 the Constitution and applicable laws, including the Privacy Act (5 U.S.C. 552a)  
17 and other statues protecting the rights of Americans.” *Id.* ¶ 6.

18 41. Entire paragraph: The Federal Defendants admit the existence of the  
19 Federal Information Processing Standards Publication (“FIPS 201”) and its  
20 revision (“FIPS 201-1”), which speak for themselves and to which the Court is  
21 referred for a full and accurate statement of their contents. First sentence:  
22 Admitted. Second sentence: Denied, except to admit that FIPS 201-1 was  
23 promulgated “pursuant to the Federal Information Security Management Act  
24 (FISMA) of 2002” and explains that HSPD-12 “directed the promulgation of a  
25 Federal standard for secure and reliable forms of identification for Federal  
26 employees and contractors.” FIPS 201-1 at iv. Third sentence: Denied, except to  
27 admit that FIPS 201-1 states that HSPD-12 established four “control objectives”  
28 and that “[e]ach agency’s PIV implementation shall meet the four control

1 objectives . . . such that . . . [o]nly an individual with a background investigation on  
2 record is issued a credential.” *Id.* § 2.1. Fourth sentence: This sentence states  
3 legal conclusions to which no response is required; to the extent a response is  
4 required, the allegations are denied except to admit that FIPS 201-1 states that  
5 “[o]nly an individual with a background investigation on record is issued a  
6 credential.” *Id.* Fifth sentence: Denied, except to admit that FIPS 201-1 provides  
7 that “[t]he process shall begin with initiation of a National Agency Check with  
8 Written Inquires (NACI) or other Office of Personnel Management (OPM) or  
9 National Security community investigation required for Federal employment.” *Id.*  
10 § 2.2.

11 42. First sentence: Denied, except to admit that by 2006 NASA had  
12 instituted an identification system that required NASA employees and contractor  
13 employees to obtain new badges recognized at all NASA centers. Second  
14 sentence: Denied, except to admit that by 2006 NASA had instituted an  
15 identification system that required NASA employees and contractor employees to  
16 obtain OneNASA badges, and that, to obtain a OneNASA badge, NASA required  
17 Caltech employees working at JPL to provide, *inter alia*, their date and place of  
18 birth, social security number, height, weight, and two forms of identification.  
19 Third sentence: Denied, except to admit that the information NASA required for  
20 OneNASA badge issuance did not include an express waiver of privacy rights.  
21 Fourth sentence: The Federal Defendants are without knowledge or information  
22 sufficient to form a belief as to the truth of the allegations as they relate to  
23 Plaintiffs’ “objection[s].” The remaining allegations state legal conclusions to  
24 which no response is required; to the extent a response is required, the allegations  
25 are denied except to admit that the information NASA required for OneNASA  
26 badge issuance did not invade Plaintiffs’ privacy rights.

27 43. Entire paragraph: The Federal Defendants admit the existence of  
28 NASA Interim Directive to NPR-1600.1 (“NID 1600.1”), which speaks for itself

1 and to which the Court is referred for a full and accurate statement of its contents.  
2 First and second sentences: Denied, except to admit that, because the OneNASA  
3 badging system did not meet HSPD-12 requirements, on or about May 24, 2007,  
4 NASA issued NID 1600.1, establishing an “Agency-wide policy for the creation  
5 and issuance of federal credentials at NASA” in accordance with the Space Act,  
6 FIPS 201-1, and HSPD-12. *See* NID 1600.1 §§ 2, 4. Third sentence: Denied,  
7 except to admit that, under NID 1600.1, “[b]adges are issued to all individuals who  
8 require physical or logical access to designated NASA resources for a period of  
9 greater than 179 days,” *id.* § 6.2.1, and that an HSPD-12 compliant badge may be  
10 referred to as a “PIV” or “PIV II” badge. Fourth sentence: The Federal  
11 Defendants admit that Exhibit J to Plaintiffs’ Motion for Preliminary Injunction  
12 reflects that on March 28, 2007, Jerry W. Sutor (Caltech) sent an email to a  
13 distribution list entitled “All Personnel” informing recipients that “[a] background  
14 investigation is part of the requirements for the PIV-II credential”; and admit that  
15 Exhibit N to Plaintiffs’ Motion for Preliminary Injunction reflects a Caltech  
16 presentation, one slide of which states that “[t]he Risk Designation Process is  
17 designed to . . . [d]etermine the degree of background investigation required for a  
18 position . . . .” Defendants are without knowledge or information sufficient to form  
19 a belief as to the truth of the remaining allegations.

20 44. Entire paragraph: The Federal Defendants admit the existence of  
21 NASA Procedural Requirements 1600.1 (“NPR 1600.1”) which speaks for itself  
22 and to which the Court is referred for a full and accurate statement of its contents.  
23 First sentence: Denied, except to admit that, under NPR 1600.1, “[t]he contract  
24 security risk level designations shall be made by the NASA Center program office  
25 representative . . . , in coordination with the CCS, appropriate IT Security  
26 Manager(s), and contractor HR Offices,” NPR 1600.1 § 4.4.2, and that the risk  
27 level designations for Caltech employees working at JPL were made in accordance  
28 with the procedures outlined in NPR 1600.1. Second sentence: Denied, except to

1 admit that, under NPR 1600.1, the security risk level designations are either high,  
2 moderate, or low, *id.* § 4.4.1; that “[t]he security risk level is determined by  
3 evaluating the sensitivity and risk of the work being performed and accesses  
4 required by the contractor and the potential for damage to NASA’s mission and  
5 operations if performed inefficiently, ineffectively, or in an unsafe or unethical  
6 manner,” *id.* § 4.4.3; and that the risk level determinations for Caltech employees  
7 were made in accordance with the procedures outlined in NPR 1600.1. Third  
8 sentence: Denied, except to admit that Caltech employees working at JPL and  
9 designated as low-risk are required, at a minimum, to have completed the SF 85 (or  
10 its equivalent) and to have submitted to the NACI (or its equivalent), in order to  
11 obtain badges. *Id.* § 4.8. Fourth sentence: Denied, except to admit that NPR  
12 1600.1 defines “low risk” positions, in part, as follows:

13 **Low Risk** positions involve duties with limited relations to the Agency and  
14 its programs and operations and which have little affect on the efficiency of  
the Agency’s programs and operations. . . . .

15 *id.* § 4.5.6.c., and, with respect to Information Technology (IT) Resources  
16 Positions, as follows:

17 **Low Risk or 1C** positions are all IT system positions that do not fall in the  
18 categories above and includes all non-sensitive positions and all other  
19 positions involving IT Systems whose misuse has limited potential for  
adverse impact or sensitive data is protected with password and encryption,

20 *id.* § 4.5.6.d.(1).(b).(3). Fifth sentence: Denied, except to admit that Caltech  
21 employees working at JPL and designated as moderate-risk or high-risk are  
22 required, at a minimum, to have completed the SF 85P (or its equivalent) and to  
23 have submitted to the NACI (or its equivalent) in order to obtain badges. *Id.* § 4.8.

24 45. The Federal Defendants deny that NASA informed Plaintiffs of their  
25 risk level designation. The Federal Defendants are without knowledge or  
26 information sufficient to form a belief as to the truth of the remaining allegations in  
27 Paragraph 45, insofar as NASA does not maintain a roster of Caltech employees  
28 and is therefore unable to confirm that all Plaintiffs have been informed of their  
risk level designation. *See Resp. supra* ¶¶ 3-30.

1           46. The Federal Defendants admit that Exhibit S to Plaintiffs' Motion for  
2 Preliminary Injunction, which reflects that on June 12, 2007, a memorandum from  
3 Eugene L. Tattini (Caltech) was sent by email to a distribution list entitled "All  
4 Personnel," and that the memo suggested that 98 percent of JPL employees were  
5 required to complete the SF 85 instead of the SF 85P. The Federal Defendants are  
6 without knowledge or information sufficient to form a belief as to the truth of the  
7 remaining allegations in Paragraph 46.

8           47. Entire paragraph: The Federal Defendants admit the existence of SF  
9 85, which speaks for itself and to which the Court is referred for a full and accurate  
10 statement of its contents. First sentence: The Federal Defendants are without  
11 knowledge or information sufficient to form a belief as to the truth of the  
12 allegations as they relate to Plaintiffs' "objection[s]." The remaining allegations  
13 are denied except to admit that the SF 85 requests the name, date of birth, place of  
14 birth, and social security number of the individual completing the form. Second  
15 sentence: This sentence states legal conclusions to which no response is required;  
16 to the extent a response is required, the allegations are denied except to admit that  
17 the SF 85 requests employment and residential history for the past five years,  
18 educational history, the names of three individuals who know the individual  
19 completing the form well, and a statement regarding illegal drug use in the past  
20 year. Third sentence: The Federal Defendants admit that Plaintiffs purport to  
21 attach a copy of SF 85 as Exhibit 1 to their First Amended Complaint.

22           48. The Federal Defendants admit the existence of SF 85, which speaks  
23 for itself and to which the Court is referred for a full and accurate statement of its  
24 contents. The remaining allegations in Paragraph 48 are denied except to admit  
25 that, to obtain their badges, Caltech employees working at JPL and designated as  
26 low-risk must have signed the "Authorization for Release of Information" in the SF  
27 85, which speaks for itself and to which the Court is referred for a full and accurate  
28 statement of its contents, or its equivalent.

1           49. The Federal Defendants admit that Exhibit S to Plaintiffs' Motion for  
2 Preliminary Injunction suggests that, on June 12, 2007, a memorandum from  
3 Eugene L. Tattini (Caltech) was sent by email to a distribution list entitled "All  
4 Personnel" informing recipients that "[s]ome individuals have expressed a concern  
5 about the general nature of the Authorization for Release of Information form.  
6 After discussions with NASA and the Office of Personnel Management (OPM),  
7 and reconfirmed by the Administrator, this form must be signed without any  
8 modification or alteration." The Federal Defendants are without knowledge or  
9 information sufficient to form a belief as to the truth of the remaining allegations in  
10 Paragraph 49.

11           50. First sentence: Denied, except to admit that, to obtain their badges,  
12 Caltech employees working at JPL and designated as low-risk are required, at a  
13 minimum, to have submitted to the NACI or its equivalent. Second and third  
14 sentences: The Federal Defendants are without knowledge or information  
15 sufficient to form a belief as to the truth of the allegations. *See Resp. supra* ¶¶ 3-  
16 30.

17           51. First sentence: Denied, except to admit that, to obtain their badges,  
18 Caltech employees working at JPL and designated as low-risk are required, at a  
19 minimum, to have completed the SF 85, which speaks for itself and to which the  
20 Court is referred for a full and accurate statement of its contents, or its equivalent;  
21 and that the SF 85 requests educational and residential history for the past five  
22 years and the names of three individuals who know the individual completing the  
23 form well. Second sentence: Denied, except to admit that the Office of Personnel  
24 Management ("OPM") may send an Investigative Request for Personal  
25 Information (Form 42), which speaks for itself and to which the Court is referred  
26 for a full and accurate statement of its contents, to some or all of the individuals  
27 listed in the SF 85 by the individual who has completed the SF 85. Third sentence:  
28 The Federal Defendants admit that Plaintiffs purport to attach a copy of Form 42 as

1 Exhibit 2 to their First Amended Complaint.

2 52. First sentence: Denied, except to admit the existence of NID 1600.1,  
3 which speaks for itself and to which the Court is referred for a full and accurate  
4 statement of its contents. Second sentence: The Federal Defendants admit that  
5 Exhibit N to Plaintiffs' Motion for Preliminary Injunction reflects a Caltech  
6 presentation, one slide of which is entitled "Adjudication" and which states  
7 "[p]erformed by a Federal employee," "[n]egative outcome would prevent  
8 individual from access to a Federal facility," and "[r]esults are not shared with  
9 JPL." The Federal Defendants are without knowledge or information sufficient to  
10 form a belief as to the truth of the remaining allegations.

11 53. Any allegations relating to the "chart" alleged in Paragraph 53 have  
12 been held not ripe for review by this Court, and therefore no response is required.

13 54. First sentence: The Federal Defendants admit that Exhibit S to  
14 Plaintiffs' Motion for Preliminary Injunction suggests that, on June 12, 2007, a  
15 memorandum from Eugene L. Tattini (Caltech) was sent by email to a distribution  
16 list entitled "All Personnel" informing recipients that "no employee is to be  
17 admitted to JPL facilities without a new badge after October 27, 2007." The  
18 Federal Defendants are without knowledge or information sufficient to form a  
19 belief as to the truth of the remaining allegations. Second sentence: The Federal  
20 Defendants admit that Exhibit S to Plaintiffs' Motion for Preliminary Injunction  
21 suggests that, on June 12, 2007, a memorandum from Eugene L. Tattini (Caltech)  
22 was sent by email to a distribution list entitled "All Personnel" informing  
23 recipients that "the last group to start badge initiation will be on September 28,  
24 2007. After that date, we will not be able to process badge requests in time to issue  
25 them by the October 27, 2007 date. To be badge eligible, your application for  
26 background investigation (SF85 for 98% of JPL employees and SF85P for  
27 remaining 2%) including your fingerprints must have been accepted by OPM.  
28 Therefore, any employee who delays responding when notified, and, as a result,

1 who is not at a minimum badge eligible by October 27, 2007, will not be allowed  
2 to enter JPL and be placed on unpaid leave until the employee successfully  
3 completes their application for background investigation including fingerprints and  
4 signing the necessary release forms.” The Federal Defendants are without  
5 knowledge or information sufficient to form a belief as to the truth of the  
6 remaining allegations.

7 55. The Federal Defendants are without knowledge or information  
8 sufficient to form a belief as to the truth of the allegations in Paragraph 55.

9 56. First and sixth sentences: The allegations in these sentences relate  
10 solely to Caltech; because Caltech has been dismissed as a Defendant in this  
11 lawsuit, no response is required. Second sentence: Denied, except to admit that, at  
12 their option, the Caltech employees could either provide their completed forms  
13 directly to the government or provide their forms to Caltech for completeness  
14 review prior to submission to the government. Third, fourth, and fifth sentences:  
15 The Federal Defendants are without knowledge or information sufficient to form a  
16 belief as to the truth of the allegations.

17 57. First sentence: This sentence states legal conclusions to which no  
18 response is required; to the extent a response is required, the allegations are denied.  
19 Second and third sentences: Denied. Fourth sentence: The Federal Defendants  
20 are without knowledge or information sufficient to form a belief as to the truth of  
21 the allegations as they relate to Plaintiffs’ conception of the value of their jobs. In  
22 addition, the statement that JPL is the “premier” institution for exploration of space  
23 is Plaintiffs’ vague and subjective characterization, to which no response is  
24 required. The remaining allegations are denied.

25 58. The allegations in Paragraph 58 state legal conclusions to which no  
26 response is required. To the extent a response is required, the Federal Defendants  
27 deny the allegations in Paragraph 58.

28 59. First sentence: Denied. Second and third sentences: The Federal

1 Defendants are without knowledge or information sufficient to form a belief as to  
2 the truth of the allegations.

3 60. The Federal Defendants incorporate each of their previous responses  
4 corresponding to Paragraphs 1 through 59 of the Complaint as if fully set forth  
5 herein.

6 61. First sentence: The Federal Defendants admit that Plaintiffs purport  
7 to bring this action individually and on behalf of all Caltech employees who work  
8 at JPL in “non-sensitive” positions. Second sentence: Denied, except to admit that  
9 approximately 5,800 Caltech employees work at JPL.

10 62. Paragraph 62 states legal conclusions to which no response is  
11 required. To the extent a response is required, the Federal Defendants deny the  
12 allegations in Paragraph 62.

13 63. Paragraph 63 states legal conclusions to which no response is  
14 required. To the extent a response is required, the Federal Defendants deny the  
15 allegations in Paragraph 63.

16 64. Paragraph 64 states legal conclusions to which no response is  
17 required. To the extent a response is required, the Federal Defendants deny the  
18 allegations in Paragraph 64.

19 65. Paragraph 65 states legal conclusions to which no response is  
20 required. To the extent a response is required, the Federal Defendants deny the  
21 allegations in Paragraph 65.

22 66. Paragraph 66 states legal conclusions to which no response is  
23 required. To the extent a response is required, the Federal Defendants deny the  
24 allegations in Paragraph 66.

25 67.-69. The allegations in Paragraphs 67 through 69 relate solely to  
26 Plaintiffs’ Fourth Amendment claims. Because these claims have been dismissed,  
27 no response is required.

28 70. The Federal Defendants incorporate each of their previous responses

1 corresponding to Paragraphs 1 through 69 of the Complaint as if fully set forth  
2 herein.

3 71. Paragraph 71 states legal conclusions to which no response is  
4 required. To the extent a response is required, the Federal Defendants deny the  
5 allegations in Paragraph 71.

6 72. Paragraph 72 states legal conclusions to which no response is  
7 required. To the extent a response is required, the Federal Defendants deny the  
8 allegations in Paragraph 72.

9 73.-75. The allegations in Paragraphs 73 through 75 relate solely to  
10 Plaintiffs' Fifth Amendment claims. Because these claims have been dismissed, no  
11 response is required.

12 76. The Federal Defendants incorporate each of their previous responses  
13 corresponding to Paragraphs 1 through 75 of the Complaint as if fully set forth  
14 herein.

15 77. Paragraph 77 states legal conclusions to which no response is  
16 required. To the extent a response is required, the Federal Defendants deny the  
17 allegations in Paragraph 77.

18 78. Paragraph 78 states legal conclusions to which no response is  
19 required. To the extent a response is required, the Federal Defendants deny the  
20 allegations in Paragraph 78.

21 79.-81. The allegations in Paragraphs 79 through 81 relate solely to  
22 Plaintiffs' claims under the California Constitution. Because these claims have  
23 been dismissed, no response is required.

24 82. The Federal Defendants incorporate each of their previous responses  
25 corresponding to Paragraphs 1 through 81 of the Complaint as if fully set forth  
26 herein.

27 83. Paragraph 83 states legal conclusions to which no response is  
28 required. To the extent a response is required, the Federal Defendants deny the

1 allegations in Paragraph 83.

2 84. Paragraph 84 states legal conclusions to which no response is  
3 required. To the extent a response is required, the Federal Defendants deny the  
4 allegations in Paragraph 84.

5 The Federal Defendants deny each and every allegation of the Complaint,  
6 including each and every request for relief, not specifically admitted in this  
7 Answer.

8 **FEDERAL DEFENDANTS' PRAYER FOR RELIEF**

9 WHEREFORE, the Federal Defendants respectfully request that the Court  
10 dismiss Plaintiffs' First Amended Complaint with prejudice and award such further  
11 relief as the Court may deem just and proper.

12 DATED: February 7, 2008

13 Respectfully submitted,

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